AHMAD KHAIRUDIN ABDUL RAHIM & ORS
v. DATUK BANDAR KUALA LUMPUR & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
AMARJEET SINGH SERJIT SINGH J
[JUDICIAL REVIEW NO: WA-25-69-02-2019]
3 SEPTEMBER 2025

Abstract – *A person challenging a public plan through judicial review must demonstrate a direct and personal interest that goes beyond the interests of the general public. If the challenge is brought in the guise of public interest litigation, it must genuinely champion a public injury and not merely serve the individual interests of the applicants.*

ADMINISTRATIVE LAW: *Judicial review – Locus standi – Challenge against legality of local plan for City of Kuala Lumpur – Allegations that final plan had material deviations and/or contradictions with draft plan – Whether applicants had requisite locus standi – Whether proceedings met test of public interest litigation – Whether applicants pursuing individual interests – Kuala Lumpur City Plan 2020 – Kuala Lumpur Structure Plan 2020*

LOCAL GOVERNMENT: *Town planning – Judicial review – Challenge against legality of local plan for City of Kuala Lumpur – Allegations that final plan had material deviations and/or contradictions with draft plan – Whether applicants had requisite locus standi to commence judicial review proceedings – Kuala Lumpur City Plan 2020 – Kuala Lumpur Structure Plan 2020*

The Dewan Bandaraya Kuala Lumpur ('DBKL') had embarked on preparing the Draft Kuala Lumpur City Plan ('Draft KLCP') in 2003. The Draft KLCP was gazetted on 14 April 2008 and it contained the DBKL's proposals for the development and use of land in the area of Kuala Lumpur, including the improvement of the physical environment and transportation. In the present application for judicial review, the applicants sought to challenge the legality of the Kuala Lumpur City Plan 2020 ('KLCP 2020'), which was the local plan for the City of Kuala Lumpur. It was submitted by the applicants that (i) from the time the Draft KLCP was ready to be adopted and gazetted, the DBKL or the Minister of Federal Territories had not notified the public of any new drafts and/or amendments to the Draft KLCP; (ii) when the KLCP 2020 came into force, the contents of the KLCP 2020 was different from the Draft KLCP and there were material deviations and/or contradictions from the Kuala Lumpur Structure Plan 2020 ('KLSP 2020'), namely, concerning: (a) the land use and density for Lot 9885; (b) the land use and density for Lot 55118; and (c) the general zoning of public opens spaces, city parks and district parks ('three deviations'); and (iii) the applicants were adversely affected by the said deviations and, therefore, had the standing to bring these judicial review proceedings as, *inter alia*, (a) they were residents and property

owners residing in areas which experienced material deviations; (b) they have enjoyed the benefit of their respective residential areas being public parks and open spaces and/or being in the vicinity of city parks and district parks, enjoying social and recreational activities as well as biodiversity and nature conservation; and (c) the applicants purchased their respective properties to reside in for the foreseeable future in reliance of the provisions contained in the Draft KLCP.

Held (dismissing application):

(1) These proceedings did not meet the test of public interest litigation and, for this reason, the applicants lacked the requisite *locus standi* to challenge the entire KLCP 2020. Based on their pleadings, the applicants were pursuing individual interests as being residents and property owners in the vicinity of the deviations. In the garb of a public interest litigation, it was actually the applicants' interest that was sought to be carried out and protected. (para 28)

(2) The applicants' focus was on the vicinity of their properties but there was the entire area of Kuala Lumpur *sans* the three deviations. There were about 1.7 million residents in Kuala Lumpur (as at 2015), landowners, developers, purchasers and many other stakeholders. Their rights must be considered. Instead, the public injury went towards the affordable homes being built for the economically weaker members of the public. There was no public injury or public interest being championed by the applicants. In this regard, the alleged claim did not fall within the meaning of public interest litigation. (para 30)

(3) The judicial review application failed on the issue of substantive *locus standi*. The applicants' standing was only in respect of the three deviations, but not to the entire KLCP 2020. Therefore, they had no *locus standi* to the reliefs that they had formulated for the following reasons: (i) the stakeholders, in particular, landowners, developers, purchasers, including construction of major infrastructure projects, had arranged their rights and businesses in accordance with the KLCP 2020 since it came into force on 30 October 2018. It has been six years since the coming into force of the KLCP 2020 and the implementation of its terms; and (ii) the DBKL had been granting planning permissions or development orders in accordance with the KLCP 2020. The construction industry and the end consumers, *ie*, homebuyers and businesses, have relied on a development plan. (paras 31, 35 & 36)

(4) The comparison with the KLSP 2020 or the original Draft KLCP in respect of the three deviations alleged was not correct unless there was evidence adduced to show that the three deviations were not the subject matter of any objections or representations. (para 50)

Case(s) referred to:

Abdul Rahman Abdullah Munir & Ors v. Datuk Bandar Kuala Lumpur & Anor [2008] 6 CLJ 805 CA ***(refd)***

Datin Azizah Abdul Ghani v. Dewan Bandaraya Kuala Lumpur & Ors And Another Appeal [1992] 4 CLJ 2071; [1992] 1 CLJ (Rep) 58 SC ***(refd)***

Datuk Bandar Kuala Lumpur v. Perbadanan Pengurusan Trellises & Ors And Other Appeals [2023] 5 CLJ 167 FC ***(refd)***

Ketua Pengarah Jabatan Alam Sekitar & Anor v. Kajing Tubek & Ors And Other Appeals [1997] 4 CLJ 253 CA ***(refd)***

Malaysian Trade Union Congress & Ors v. Menteri Tenaga, Air Dan Komunikasi & Anor [2014] 2 CLJ 525 FC ***(refd)***

Malik Brothers v. Narendra Dadhich & Ors AIR 1999 SC 3211 ***(refd)***

Legislation referred to:

Federal Territory (Planning) Act 1982, ss. 2, 3, 4(1), 6, 7, 8, 9, 10, 11, 13(2), 14, 15, 16(1)

Planning (Development) Rules 1970, r. 5

For the applicant - Gurdial Singh Nijar, Alliff Benjamin Suhaimi, Abraham Au Tian Hui & Phoebe Loi Yean Wei; M/s Thomas Philip

For the 1st respondent - Thangaraj Balasundram & Nalani Murugiah; M/s Thangaraj & Assocs

For the 2nd respondent - Nur Irmawatie Daud; SFC & Muhammad Asraf Shahabuddin; FC

Reported by Najib Tamby

JUDGMENT

Amarjeet Singh Serjit Singh J:

Introduction

[1] This is an application for judicial review challenging the legality of the Kuala Lumpur City Plan 2020 ("KLCP 2020"), which is the local plan for the City of Kuala Lumpur (also known as the Kuala Lumpur Local Plan 2020 or KLLP 2020). The sole determination for this court was whether the process leading to the gazettement of the KLCP 2020 was lawfully done.

[2] Leave was granted to the applicants to commence judicial review proceedings for the following reliefs (encl. 41):

(i) a declaration that the Kuala Lumpur Local Plan 2020 (KLCP 2020), as adopted and gazetted by the Datuk Bandar Kuala Lumpur ("DBKL") on 30 November 2018, is illegal and/or null and void;

(ii) an order of *certiorari* to quash the decision by the DBKL in adopting and gazetting the KLCP 2020 on 30 November 2018;

(iii) an order of *certiorari* to quash the decision by the Minister of the Federal Territories ("the Minister") in approving the KLCP 2020 for adoption and gazettement by the DBKL;

(iv) an order of *mandamus* for the DBKL and the Minister respondents to approve, adopt, and *Gazette* a new KLCP 2020 based on the draft KLCP 2020, which was presented for public viewing and feedback sometime around May 2008;

in the alternative,

(v) an order of *certiorari* to quash the decision of the DBKL to adopt and *Gazette* Addendum 1 of the KLCP 2020;

(vi) a declaration that Addendum 1 of the KLCP is illegal and/or null and void;

(vii) alternatively, a declaration that the said Addendum 1 is not part of the KLCP 2020; and

(viii) an order of *mandamus* for the respondents to rectify the KLCP to reflect all the changes brought about by the deletion of Addendum 1.

[3] At the hearing of the substantive stage on 11 November 2024, counsel informed that the applicants are withdrawing reliefs 1.4, 1.5, 1.6, and 1.7 and are proceeding only with reliefs 1.1, 1.2, 1.3, and 1.8. It was further informed that relief 1.8 was amended to the following:

> an order of *mandamus* for the respondents to rectify the KLCP 2020 by removing/excising any subsequent changes made to the draft Kuala Lumpur Local Plan 2020 as at 30 September 2011 that are not modifications "so as to take account of the objections or representations or for any matters arising therefrom".

[4] On 12 March 2025, I dismissed the judicial review application with costs. The reasons for my decision are as follows.

Background Facts

[5] The DBKL (the first respondent) is the planning authority for controlling and regulating the proper planning of the City of Kuala Lumpur according to the Federal Territory (Planning) Act 1982 ("the FTP Act"). The Minister of the Federal Territories ("the Minister") is responsible for the general policy with respect to the planning and development of all lands in the City of Kuala Lumpur. The function of the DBKL which may be supplemented with directions which the Minister may give the DBKL. This is provided in ss. 3 and 6 of the FTP Act. To advice the Minister on the general policy in respect of planning of the development of the lands in the City of Kuala Lumpur is the Federal Territory Planning Advisory Board ("the FT Advisory Board"). The FT Advisory Board is established under s. 4 of the FTP Act, and amongst the advice given to the Minister includes concerning the draft structure plan and draft local plan. The DBKL had prepared the Kuala Lumpur Structure Plan 1984 ("KLSP 1984") pursuant to ss. 7 to 9 of the FTP Act.

[6] The KLSP 1994 was gazetted on 4 November 1984 and was for a period of ten years. Sections 10 and 11 of the FTP Act regulates the manner in which any revision or replacement of an existing structure plan is to be carried out. The structure plan would be revised or replaced if found to be expedient and necessary, taking into account, *inter alia*, changes to existing policies usually caused by rapid development. The KLSP 1994 was replaced by the KLSP 2020, which was gazetted on 4 November 2004.

[7] The structure plan is a base plan which sets out the vision, goals, broad policies, and proposals' intended to guide the development of Kuala Lumpur, and it does not contain detailed physical planning for each area. The KLSP 2020 states that the detailed physical planning for each area would be stated in a local plan. Both these plans fall within the meaning of 'development plan' in s. 2 of the FTP Act. The local plan contains details of all the separate relevant components that make up the City of Kuala Lumpur, *ie*, its economic base and population, land use and development strategies, commerce, tourism, industry, transportation, infrastructure and utilities, housing, community facilities, urban design and landscape, environment, and special areas. It also provides how each plot is to be developed and sets out the development intensity, *ie*, human density or plot ratio and zoning use.

[8] After the KLSP 2020 came into force, the DBKL proceeded to prepare for the first-ever local plan for the City of Kuala Lumpur in accordance with ss. 13 to 16 of the FTP Act. The local plan would provide landowners and developers a more comprehensive and detailed planning guideline for the development of specific sites in the City of Kuala Lumpur.

Draft Local Plan – Draft KLCP

[9] The starting point would be s. 13(2) of the FTP Act, which requires the preparation of a draft local plan. The DBKL embarked on preparing the draft local plan sometime in 2003. It was to be a comprehensive plan for the whole of Kuala Lumpur. The draft prepared by the DBKL was known as the draft Kuala Lumpur City Plan ("the draft KLCP"). The draft KLCP was gazetted on 14 April 2008. It contained the DBKL's proposals for the development and use of land in the area of Kuala Lumpur, including the improvement of the physical environment and transportation. The draft KLCP was then publicised to the public and stakeholders in accordance with ss. 14 and 7 of the FTP Act, inviting objections and representations from the general public and stakeholders. The DBKL appointed a Public Opinion Hearing Committee to hear and consider the objections and representations received from the public and stakeholders, which included professional bodies, academicians, experts in relevant fields, and interest groups.

[10] On conclusion of the hearing and considering the representations and objections, the Public Opinion Hearing Committee submitted a report to the DBKL. The DBKL then amended the draft KLCP according to the report and after considering the advice from the FT Advisory Board (whose role under s. 4(1) of the FTP Act is to advice the DBKL on the draft local plan).

[11] Thereafter, the DBKL held a series of public and stakeholders' engagement workshops and received feedback from various agencies and Ministries, including current policies such as the National Key Economic Area ("NKEA") of Greater Kuala Lumpur/Klang Valley and the proposed Mass Rapid Transit ("MRT") System. A series of 17 meetings were held with various agencies and Ministries to discuss several matters. Lastly, the public were informed of the proposed amendments to the draft KLCP during open day sessions held over a period of three days.

[12] As a result of all actions taken, the DBKL on 30 September 2009 came up with the draft KLCP as amended ("the amended draft KLCP").

Adoption And Gazetting Of The Amended Draft KLCP

[13] However, the adoption of the amended draft KLCP was deferred several times to take into account the following matters:

(i) first postponement from 30 September 2011 to 2 February 2012 for the DBKL to take into account further amendments to be made on issues relating to the proposed public transport, solid waste management, the redevelopment strategy of Kampung Bharu, and detailed proposals for projects under the NKEA for Greater Kuala Lumpur/Klang Valley. The amendments also involved facilities for senior citizens, bicycle lanes, and the enhancement of industrial areas;

(ii) second postponement from 2 February 2012 to 28 February 2013 was due to the fact that several agencies were still not able to provide the necessary feedback on several recent Government decisions which were not taken into account in the amended draft KLCP, such as, the MRT route which was not finalised, proposed extension of the DUKE Highway and the North Pantai Expressway and lands owned by the Federal Lands Commissioner which would be developed or privatised;

(iii) third postponement from 28 February 2013 to 1 July 2013 to resolve two issues – (a) the proposed rail network and stations and the Highway Network, which had not been determined by the relevant agencies, and (b) the planning of the River of Life Project;

(iv) fourth postponement from 1 July 2013 to 10 September 2013 for the purpose of updating the proposed zoning and development intensity by taking into account all planning approvals and decisions made by the DBKL, the Land Executive Committee, and the Public Private Partnership Committee up to July 2013;

(v) fifth postponement from 10 September 2013 to a date to be determined for the Minister to review the amended draft KLCP in order for another study to be conducted at the Sungai Penchala, Gombak, and Dato' Keramat areas and the development of Tentera Udara Diraja Malaysia ("TUDM") land in Sungai Besi; and

(vi) on 19 January 2015 a meeting was held with the Minister during which it was proposed for the Kuala Lumpur Development City Plan 2015 ("KLDCP 2015"), which forms part of the amended draft KLCP, was prepared to show the land use and intensity of development in Kuala Lumpur based on the amendment made to the draft KLCP as of May 2015.

[14] During the period from 22 February 2015 until 30 October 2018, all approvals for planning permission were considered and approved in accordance with KLDCP 2015. As the local plan is yet to be gazetted, the approvals were granted based on KLDCP 2015, except for the planning permission, which involves a change in land use and intensity of development, which is contrary to KLDCP 2015, which will go through the process of "Rule 5 hearing" provided in r. 5 of the Planning (Development) Rules 1970. It is to be observed that a r. 5 hearing was required as a matter of law at the material time. The law was changed when the Federal Court decided the *Trellises* case on 18 April 2023. Further, the approvals granted, which were not in accordance with the land use and intensity of development with KLDCP 2015 for the period from May 2015 to June 2018, are reflected in Addendum 1 to KLCP 2020. From Addendum 1, the date of the development orders, the projects, and the status and stage of completion can be clearly identified. These development orders were approved on diverse dates from 11 June 2015 to 20 June 2018. The Minister had given his approval on 5 September 2018. The KLCP 2020 (which included the KLDCP 2015 and the said Addendum 1) was adopted on 29 October 2018 and gazetted on 30 October 2018.

The Pleadings In The Amended Order 53 Statement

[15] In the amended O. 53 statement, the applicants are stated as Malaysian citizens residing and having properties in the following addresses in Kuala Lumpur:

(i) the first applicant at No 1, Medan Athinahapan 1, Taman Tun Dr Ismail and The Westside 2, Jalan Residen Utama, Desa Parkcity;

(ii) the second applicant at No 3, Lorong Kasah Dalam, Medan Damansara and Seri Duta 2, Jalan Langgak Duta, Taman Duta;

(iii) the third applicant at No 62, Medan Athinahapan 2, Taman Tun Dr Ismail;

(iv) the fourth applicant at 16587, Jalan Tiara Titiwangsa 2, Taman Tiara Titiwangsa;

(v) the fifth applicant at Trellises Apartments, Jalan Tun Mohd Fuad, Taman Tun Dr Ismail;

(vi) the sixth applicant at Kiara Green Townhouse, Jalan Tun Mohd Fuad, Taman Tun Dr Ismail; and

(vii) the seventh and eighth applicants at No 7, Lorong Kemaris 2, Bangsar.

[16] It was specifically pleaded that the applicants are bringing the proceedings in their capacities as long-term residents of and property owners in Kuala Lumpur and are persons entitled to be heard under the FTP Act.

[17] The applicants acknowledged at para. 15 of the amended O. 53 statement that, as early as 2013, the draft KLCP had gone through the proper processes, including public consultations and hearings as provided in the FTP Act, and that the same was ready to be adopted and subsequently gazetted pursuant to s. 16 of the FTP Act. It was stated that at the material time there were no material changes to the draft KLCP in regard to areas where the applicants' residences and properties were situated.

[18] It was pleaded that from the time the draft KLCP was ready to be adopted and gazetted, *ie*, at the end of 2012 to 30 October 2018 when the KLCP 2020 was gazetted, the DBKL or the Minister did not notify the public of any new drafts and/or amendments to the draft KLCP. When the KLCP 2020 came into force on 12 November 2018, the applicants alleged that the contents of the KLCP 2020 was different from the draft KLCP. It was alleged as follows: the KLCP 2020 contains material deviations and/or contradictions from the KLSP 2020.

[19] The material deviations and/or contradictions pleaded (see paras. 24 to 31 of the amended O. 53 statement) were as follows:

(i) Lot 9885, which is in the vicinity as Taman Tiara Titiwangsa, was altered from a public open space to a Residential Zone – Residential 3 Zone. This has increased the density of Lot 9885 from 32 persons an acre to 121, to a maximum of 400 per acre;

(ii) Lot 55118 which is in the vicinity as Taman Tun Dr Ismail which was a single lot was demarcated as being a green area, local park, public open space, recreation and sports facilities with zero density and development intensity was altered to three sections: (a) from temple and public open space to a mixed development with a plot ratio of ten and a population density of 976 persons; (b) from public open space to a with a plot ratio of four and a population density of 900 and 400 per acre; and (c) from public open space to a transit planning zone which may result in further high density development; and

(iii) Taman Tasik Titiwangsa and Taman Tun Dr Ismail, which contain public parks, open space city park, and district park, were low-density residential areas. The KLCP 2020 has reduced the public parks and open

spaces in Kuala Lumpur to 7.47% of the total area of Kuala Lumpur. The previous city park and district park for Taman Titiwangsa has been removed, while the local map for Taman Tun Dr Ismail changed the density and zoning surrounding Taman Rimba Kiara.

[20] It is observed that these are the only deviations stated in the amended O. 53 statement.

The Applicants' Claim Of Being Adversely Affected

[21] The applicants stated that they are adversely affected by the said deviations stated in paras. 33.4, 33.5, 33.6, 33.8, and 33.9 of the amended O. 53 statement and therefore have the standing to bring these judicial review proceedings. Specifically, the applicants stated as follows:

(i) they are residents and property owners residing in areas which experience material deviations (para. 33.4);

(ii) they have enjoyed the benefit of their respective residential areas being public parks and open spaces and/or being in the vicinity of city parks and district parks, enjoying social and recreational activities as well as biodiversity and nature conservation (para. 33.5);

(iii) the decrease in the present existing public parks, open spaces, city parks, and district parks will as it will negatively impact the air quality and greenery, thereby reducing their quality of life (para. 33.6);

(iv) the decrease in the preservation and/or conservation of the green environment, public parks, open spaces, city parks, and district parks will significantly reduce the attractiveness value and benefits of the applicants' properties (para. 33.8); and

(v) the applicants purchased their respective properties to reside in for the foreseeable future in reliance of the provisions contained in the draft KLCP.

Analysis And Decision

[22] The law is trite. The development plan for an area is the local plan, and in the absence of a local plan is the structure plan for the area. In *Datuk Bandar Kuala Lumpur v. Perbadanan Pengurusan Trellises & Ors And Other Appeals* [2023] 5 CLJ 167, it was held that the development plans are given the force of law by the FTP Act and 'slavish compliance' is required. In *Trellises*, since there was no local plan, the structure plan had to be complied with, in the instant case, the local plan, *ie*, the KLCP 2020, which was gazetted on 30 October 2018, is to be complied with.

[23] The instant judicial review proceeding is questioning the legality of the entire KLCP 2020. The challenge is based on the three deviations from the amended draft KLCP:

A (i) land use and density for Lot 9885;

(ii) land use and density for Lot 55118; and

(iii) general zoning of public open spaces, city parks, and district parks.

B **[24]** A perusal of the reliefs sought reveals that essentially the order of declaration is an alternative to the order of *certiorari* and are predicated on the established ground of illegality. The relief is followed with an order of *mandamus* that the DBKL and the Minister approve, adopt, and Gazette a new KLCP 2020 based on the amended draft KLCP 2020, which was the result of public viewing and feedback.

C **[25]** I will now address the issues raised by the parties before this court under the following headings.

Substantive *Locus Standi* And Public Interest Litigation

D **[26]** It was submitted by the DBKL and the Minister that the applicants do not have substantive *locus standi* to challenge the entire KLCP 2020. As shown above, the proceedings were brought by the applicants on the basis that they are residents and long-term property owners. The identified three deviations in the KLCP 2020. They claim that all three deviations have an adverse effect on their properties and their enjoyment of public parks and E open space. This was the basis for leave being granted, *ie*, that they had threshold *locus standi* by satisfying the test of 'adversely affected' by showing a real and genuine interest in the deviations.

[27] However, in the applicants' counsel speaking note, it was submitted that the judicial review proceedings were being brought as a 'public interest F litigation'.

[28] I hold that these proceedings do not meet the test of public interest litigation, and for this reason, the applicants lack the requisite *locus standi* to challenge the entire KLCP 2020. My reasons for so holding are as follows. Firstly, the pleadings in the amended O. 53 statement (see para. 21 above) G clearly show that the applicants are pursuing individual interests as being residents and property owners in the vicinity of the deviations. Secondly, that in the garb of a public interest litigation, it was actually the applicants' interest was sought to be carried out and protected.

H **[29]** For the second reason, the test is stated in *Malik Brothers v. Narendra Dadhich & Others* AIR 1999 SC 3211 and adopted by the Federal Court in *Malaysian Trade Union Congress & Ors v. Menteri Tenaga, Air Dan Komunikasi & Anor* [2014] 2 CLJ 525 and is pronounced in the following words:

> I Public interest litigation is usually entertained by a court for the purpose of redressing public injury, enforcing public duty, protecting social rights, and vindicating public interest. The real purpose of entertaining such an application is the vindication of the rule of law, effective access to justice to the economically weaker class, and meaningful realisation of the

> fundamental rights. The directions and commands issued by the courts of law in public interest litigation are for the betterment of the society at large and not for benefiting any individual. But if the court finds that in the garb of a public interest litigation, actually an individual's interest is sought to be carried out or protected, it would be a bounden duty of the court not to entertain such petition, as otherwise the very purpose of innovation of public interest litigation will be frustrated.

[30] The applicants are eight individuals who claimed to be aggrieved by the KLCP 2020 and have applied for the entire KLCP to be invalidated. Their focus was on the vicinity of their properties, but there is the entire area of Kuala Lumpur, *sans* the three alleged deviations alleged by the applicants. There are about 1.7 million residents in Kuala Lumpur (as at 2015), landowners, developers, purchasers, and many other stakeholders. Their rights must be considered. Instead, the public injury goes towards the affordable homes being built for the economically weaker members of the public. There is no public injury or public interest being championed by the applicants. In this regard, the alleged claim does not fall within the meaning of public interest litigation.

[31] The matter does not end here; there is still the issue of substantive *locus standi* to be considered. I find that after considering the totality of the evidence, the judicial review application fails on the issue of "substantive *locus standi*".

[32] Before I give my reasons for so holding, it is opportune to state the law on "substantive *locus standi*". The starting point is the decision of the Court of Appeal in *Ketua Pengarah Jabatan Alam Sekitar & Anor v. Kajing Tubek & Ors And Other Appeals* [1997] 4 CLJ 253. In that case, the distinction between threshold and the substantive *locus standi* was explained as follows (approved by the Federal Court in *Malaysian Trade Union Congress & Ors v. Menteri Tenaga, Air Dan Komunikasi & Anor* [2014] 2 CLJ 525):

> In public law – and, in so far at least as the appellants in the first and second appeal are concerned, the summons in the present instance lies in public law – there are two kinds of *locus standi*. The first is the initial or threshold *locus standi*; the second is the substantive *locus standi.*
>
> Threshold *locus standi* refers to the right of a litigant to approach the court in relation to the facts which form the substratum of his complaint. It is usually tested upon an application by the defendant to have the action struck out on the ground that the plaintiff, even if all that he alleges is true, cannot seek redress in the courts.
>
> Although a litigant may have threshold *locus standi* in the sense discussed, he may, for substantive reasons, be disentitled to declaratory relief. This, then, is substantive *locus standi*. The factors that go to a denial of substantive *locus standi* are so numerous and wide-ranging that it is inappropriate to attempt an effectual summary of them. Suffice to say that

A they range from the nature of the subject matter in respect of which curial intervention is sought to those settled principles on the basis of which a court refuses declaratory or injunctive relief.

[33] The latest case on the subject is *Datuk Bandar Kuala Lumpur v. Perbadanan Pengurusan Trellises & Ors And Other Appeals* [2023] 5 CLJ 167, B wherein the law was reiterated in the following words:

(i) Order 53 r. 2(4) relates to threshold *locus standi*. The reference to substantive *locus standi* is, effectively, a reference to the substantive merits of the case, *which allows the court to review its finding on threshold locus standi in view of the factual and legal matrix of the entirety of the matter*; C and

(ii) a person or entity may well fall within the broad approach to 'adversely affected' as envisaged under O. 53 r. 2(4) in the context of the particular area of law or statute dealing with the subject matter of a case, *but yet may not succeed on a substantive examination of the matter because when the* D *entirety of the legal and factual matrix is analysed, he may not have met the requirements to warrant the grant of the various remedies available under judicial review*. (emphasis added)

[34] Thus, a person can be found to have been clothed with threshold *locus standi*, but can fail to meet the requirement of substantive *locus standi* because E that person was not entitled to the reliefs sought. This happened in the *Malaysian Trade Union Congress* case. In the same case, it was held that one would fail if a person faileds to show that he has a legal right to seek the pleaded reliefs, that person lacks substantive *locus standi*. At this stage, which is at the conclusion of the hearing, the court has to assess the applicant's F claim to standing against the whole legal and factual context of the application.

[35] In undertaking the exercise, I found after reviewing the findings of threshold *locus standi* based on the factual and legal matrix of the entirety of G the matter before me that the applicants' standing is only in respect of the three deviations made, but not to the entire KLCP 2020. Therefore, the applicants have no *locus standi* to the reliefs they have formulated. To fortify the above reason are the following facts:

(i) the stakeholders, in particular, landowners, developers, purchasers, H including construction of major infrastructure projects, have arranged their rights and businesses in accordance with the KLCP 2020 since it came into force on 30 October 2018. It has been six years since the coming into force of the KLCP 2020 and the implementation of its terms; and

I (ii) the DBKL has been granting planning permissions or development orders in accordance with KLCP 2020. The construction industry and the end consumers, *ie*, homebuyers and businesses, have relied on a development plan.

[36] For the above reasons, the judicial review application fails on the issue of "substantive *locus standi*".

Failure To Comply With Mandatory Requirements

[37] For completeness, I turn to the merits of the applicants' case. It was alleged that there was a failure to comply with the statutory requirements before the amended draft KLCP 2020 was approved, adopted, and finally gazetted as the KLCP 2020 on 30 October 2018. The failure, it is argued, resulted in the entire KLCP 2020 being null and void on the grounds of illegality.

[38] I am unable to agree with the applicants' contention. In this regard, I will begin with the submissions of the parties.

[39] The applicants articulated their position as follows. That under s. 16(1) of the FTP Act, post objections and/or representations, the DBKL and the Minister can only deal with the draft KLCP in two ways: (i) adopt the draft KLCP prepared in 2008 as originally prepared; or (ii) modify the draft KLCP so as to take into account objections and/or representations or for any matters arising therefrom. The evidence revealed that the draft KLCP was modified at the direction given by the Minister on 30 September 2011 after consultation with the FT Advisory Council. After modification, the draft KLCP is known as the amended draft KLCP.

[40] To appreciate the point, s. 16(1) of the FTP Act provide is reproduced below:

> After the expiry of the period afforded for making objections to or representation in respect of a draft local plan or, if such objections or representations have been duly made during that period after considering the objections or representations, the Commissioner may with the approval of the Minister, subject to subsection (2) adopt the plan either as originally prepared or as modified so as to take account of the objections or representations or for any matters arising therefrom, and thereupon the plan shall come into effect.

[41] The applicants contended that at this stage, *ie*, after the modifications were made, the process was complete. The public consultation had concluded. All that was left was for the approval of the Minister and the adoption and gazetting of the amended draft KLCP as the KLCP 2020. However, the amended draft KLCP appeared to have undergone further amendments in 2011, 2012, and 2013, respectively. It was alleged that these amendments were made unilaterally by DBKL, taking into account matters that were not presented to the public for objections as sanctioned by s. 16(1) of the FTP Act. The act of not consulting the public was, according to the applicants, the sting of the illegality.

[42] The applicants alleged that the "other matters" that DBKL said required attention were new projects, *ie*, the 'River of Life' project and the MRT project, which were not presented to the public for objections and do not amount to modifications. The subsequent postponement of the of the adoption plan was to "update on the development zoning and intensity" by taking into account development orders that have been approved by DBKL and the Land Executive Council up to July 2013. Then the KLDCP 2015 was prepared, showing the 'up to date' land use and intensity of development as of May 2015, and an addendum known as Addendum 1, consisting of all development orders issued from May 2015 to June 2018.

[43] It was argued that DBKL acted unlawfully in making amendments in respect of "matters that did not come about/arise from public objections/ consultation process. According to the applicants, the permissible amendments are strictly limited to amendments that arise from public objections or representations and nothing else". Therefore, all such amendments, *ie*, post 30 September 2011, are illegal for non-compliance of statutory requirements relating to public consultation.

[44] The DBKL and the Minister contended lawful compliance with the provisions of the FTP Act, in particular s. 16(1). It was submitted that the process was not complete as there were 'other matters arising therefrom' is not only the objections but also representations. This was the cause of the amendments which came about by the several postponements that the applicants are taking issue with. The postponements were as follows:

(i) the first concerned issues relating the proposed public transport, the redevelopment strategy of Kampung Bharu, detailed proposals for projects under the Greater Kuala Lumpur/Klang Valley and the National Key Economic Areas ("NKEA"), facilities for senior citizens, bicycle lanes, and enhancement of industrial areas;

(ii) the second concerned necessary feedback on several government decisions concerning transport, *ie*, the MRT route, which was not finalised, proposed extension of the DUKE Highway and the North Pantai Expressway, and lands owned by the Federal Lands Commissioner, which would be developed or privatised;

(iii) the third concerned the proposed rail network and stations and the river of life project;

(iv) the fourth concerned updating the proposed zoning and development intensity by taking into account all planning approvals and decisions made by the DBKL, Land Executive Committee, and the Public Private Partnership Committee up to July 2013; and

(v) the fifth concerned the preparing the Kuala Lumpur Development City Plan 2015 ("KLDCP 2015") to take into account all alienated lands and development orders approved from May 2015 to June 2018 to show the land use and intensity of development in Kuala Lumpur.

[45] It was pointed out that s. 14, read with s. 7 of the FTP Act, concerns "objections" while s. 15 of the FTP Act concerns "representations". The two words are different and for different purposes. The period within which "objections" may be made may be extended if it is considered necessary, but there is no specific time for hearing or making "representations". Thus, the right to make objections has a specific time; there is no time stated for representations. Further, the word 'objection' means a formal statement opposing something that has occurred or is about to occur, while 'representation' means a presentation of fact either by words or by conduct. I agree with this interpretation. The representations come from various parties such as Government agencies and statutory bodies.

[46] It was submitted that the second method of adopting the draft KLCP is by making modifications after the expiry of the period afforded for making objections to representations of the draft KLCP. The draft KLCP is modified so as to take account of the objections or representations or for any matters arising therefrom. The modifications are also made in respect of matters arising from the objections or representations. The further information and details would be matters arising from the representations that had been made. It would be too restrictive to state that the process was complete with the public objections and representations. This fails to consider the words "for any matters arising therefrom", *ie*, that is, matters arising from the objections and the representations. The DBKL is therefore to take into account matters arising from the representations.

[47] The next question arises from the modified relief 1.8, which is an order of *mandamus* for the respondents to rectify the KLCP 2020 by excising the changes made to the draft KLCP as of 30 September 2011 that are not modifications that "take account of the objections or representations or for any matters arising therefrom". This requires the question as to what the said modifications are.

[48] This brings me to the pleaded case of the applicants in para. 15 of the amended O. 53 statement. It was pleaded that as early as 2013, the draft KLCP had gone through the proper process including public consultations and hearings. But in the modified relief 1.8, they are seeking to excise the modifications made post 30 September 2011. Therefore, amendments made in 2011 and 2012 are not in issue, it is trite that this court ought not decide on matters that are not pleaded.

[49] The only modifications that were pleaded and targeted in the O. 53 statement was that stated in para. 23. It was pleaded that the KLCP 2020 contains material deviations from the KLSP 2020 and draft KLCP, which are in respect of (i) Lot 9885 – Taman Tiara Titiwangsa; (ii) Lot 55118 – Taman Tun Dr Ismail; (iii) Zoning of public parks, open space, district parks, and city parks.

[50] On the pleaded case, the plaintiff cannot succeed as the final product, *ie*, the KLCP 2020, cannot be the same as the original draft KLCP if the second method of adopting the draft plan, that is to say, the draft plan as modified after taking into account the objections or representations and any matters arising from the objections or representation. The second method was undisputedly the case here. As such, the comparison with the KLSP or the original draft KLCP in respect of the three deviations alleged is not correct unless there is evidence adduced to show that the three alleged deviations were not the subject matter of any objections or representations.

[51] It follows that reliefs 1.1, 1.2, and 1.3 would not succeed. Further, the modified relief 1.8 would also fail as it is not supported by the applicants' pleaded case or evidence. For the reasons given, the applicants' claim of illegality of the KLCP 2020 is rejected.

Development Planning Must Precede Development Orders

[52] It was contended in the applicant's counsel speaking note that instead of swiftly adopting the amended draft KLCP as of 30 September 2011, the DBKL allowed development orders to be applied for and approved, and thereafter amended the amended draft KLCP by superimposing the changes in land use and intensity arising from the development orders issued into the draft KLCP. Thus, the land use and intensity changed, not based on public consultation, but development orders granted individually.

[53] It was alleged by way of example how the land use and density were changed for Lot 9885 – Taman Tiara Titiwangsa and Lot 55118 – Taman Tun Dr Ismail. Cross-referenced with the applicants' written submissions, it was alleged that:

(i) for Lot 9885, the land use was changed from public open space to a residential zone, *ie*, Residential Zone 3, which increased the density from 32 persons per acre to 121 persons per acre, up to a maximum of 400 persons per acre; and

(ii) for Lot 55118, the land use was changed from a green area, local park, public open space, recreation, and place of worship to a mixed development, which increased with a plot ratio of ten and density from zero to 976 persons per acre.

[54] It was further alleged that the KLCP 2020 was gazetted on 30 October 2018 on the assumption that the development order for a building in Lot 55118 was valid. The development order, which affected Taman Rimba Kiara, a public park nestled within Taman Tun Dr Ismail, was in 2021 quashed by the Court of Appeal in the *Trellises* case on the basis that it was inconsistent with the KLSP 2020. The Federal Court in *Trellises* affirmed the quashing order. Thus, it was submitted that the land use and density changes brought onto the KLCP 2020 as a result of the development order were also invalid. In the KLCP 2020, Taman Rimba Kiara is demarcated as an area for mixed development as a result of the illegal development order.

[55] To tie how the decision in *Taman Rimba Kiara* or the *Trellises* case is applicable to the instant judicial review proceedings, it was submitted the decision was to the effect that development orders must follow the development plans, *ie*, the structure plan or the local plan, and not the other way around. It was submitted that the instant case is the exact scenario, *ie*, that the *Trellises* decision is on all fours with the instant case.

[56] This ground is a new ground not pleaded in the O. 53 statement. In the O. 53 statement, what was pleaded in respect of the 273 development orders, which include the two development orders for Lot 9885 and Lot 55118, are as follows:

> The Respondents have acknowledged that there are 273 Development Orders listed in the Addendum 1 of the New KLLP ("the unlawful Developments") which have been granted, are in breach of the KL Structure Plan and/or Draft KLLP.
>
> Despite acknowledging the Unlawful Developments are in breach of the KL Structure Plan and/or Draft KLLP, the Respondents proceeded to unlawfully approve, adopt, and *gazette* the same as part of the New KLLP.

[57] In the applicant's counsel speaking note, this morphed into the contention that DBKL allowed development orders to be applied for and approved, and thereafter amended the amended draft KLCP by superimposing the changes in land use and intensity arising from the development orders issued into the draft KLCP. Thereby, causing the land use and intensity to change, not based on public consultation, but development orders that were granted individually.

[58] The DBKL had shown and explained how the Addendum 1 came about and its purpose. First, the KLDCP 2015 (which forms part of the amended draft KLCP) was prepared to show the land use and intensity of development in Kuala Lumpur based on the amendments made to the draft KLCP as of May 2015. However, since the KLCP was not yet adopted and gazetted, development orders presented for approval for the period from 22 February 2015 to 30 October 2018 were considered and approved in accordance with KLDCP 2015. The approvals were granted based on the KLDCP 2015. It was shown that the approvals which involved changes in land use and intensity of development, contrary to KLDCP 2015, proceeded the r. 5 hearing process.

[59] This was because at that time the Court of Appeal had yet to decide on the *Trellises* case, and according to the case-law then, namely, *Datin Azizah Abdul Ghani v. Dewan Bandaraya Kuala Lumpur & Ors And Another Appeal* [1992] 4 CLJ 2071; [1992] 1 CLJ (Rep) 58; [1992] 2 MLJ 393, which was binding on the DBKL, such applications for development orders had to go through the process of public consultation, *ie*, the r. 5 hearing. At the material time, the case law also showed that the structure plan prepared under the FTP Act had no force of law (see *Abdul Rahman Abdullah Munir & Ors v. Datuk Bandar Kuala Lumpur & Anor* [2008] 6 CLJ 805).

[60] Thus, when there is an application for a change of land use and an increase in the intensity of the development, the DBKL will conduct a r. 5 hearing before considering the application for planning permission.

[61] There were 273 development orders granted for the period from 11 June 2015 to 20 June 2018 out of a total of 1,901 development orders. These orders were not in accordance with the land use and intensity of the KLDCP 2015. All these development orders went through the r. 5 hearing. These development orders were listed in Addendum 1. One of the 273 development orders, *ie*, the development order for Lot 9244, was challenged in court by way of judicial review and eventually set aside in January 2021 by the Court of Appeal in the *Trellises* case, and was upheld by the Federal Court. This was when the law changed, *ie*, that development orders must comply with the development plans as provided under the FTP Act, which gave rise to the use of the catchy phrase – the 'stream' (development orders) cannot rise above the 'source' (development plans).

[62] In the circumstances, the situation that the 'stream' cannot rise above the 'source' does not apply to the factual situation of the instant case. It was clearly shown that the land use and intensity of development was in accordance with the KLDCP 2015. The DBKL did not superimpose the changes made to the land use and intensity arising from the development orders into the Draft KLCP.

[63] Addendum 1 to the KLCP 2020 was prepared to avoid any confusion on the part of the general public regarding the approvals of the development orders which were approved after the KLDCP 2015 was prepared. Further, the majority of the projects involving these 273 development orders are either in the process of construction or have been completed and the units in these developments have been sold by developers to purchasers.

[64] In the final analysis, the *Trellises* case is not on all fours with the instant judicial review proceedings. The *Trellises* case concerns an application to quash a development order granted by the DBKL to a private entity to carry out a mixed development within an area zoned as an 'open space' under the KLSP 2020. It was in this context that the issue arose whether the KLSP 2020 has the force of law, which would require the DBKL to comply with the KLSP 2020. The Court of Appeal held that the development plans have the force of law and would require 'slavish compliance'. The instant case, on the other hand, concerns a judicial review application to quash the KLCP 2020, which is the detailed master plan for the City of Kuala Lumpur.

Conclusion

[65] For the above reasons, the judicial review application was dismissed with costs.